



National Association of State Telecommunications Directors

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FEDERAL COMMUNICATIONS COMMISSION
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Office of the Secretary
Federal Communications Commission
1919 M Street N.W., Room 222
Washington, D.C. 20554
HAND DELIVERED

RE: CC Docket No. 96-45, DA98-977, Motion for Declaratory Ruling
or, Alternatively, Petition for Waiver, by the State of Florida
Department of Management Services

Enclosed for filing are an original and five (5) copies of the COMMENT
IN SUPPORT by the National Association of State
Telecommunications Directors in the above-referenced proceeding.

Also enclosed is a diskette with the COMMENT saved in WordPerfect
format.

Thank you for your consideration.

Sincerely,

Jody McCann
President

cc: Irene Flannery
Francis Downey
NASTD Executive Board

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Florida Department of Management)
Services Motion for Declaratory)
Ruling or, in the Alternative,) Docket No. DA98-977
Petition for Waiver of Existing)
Contracts Rule (Pleading Cycle)
Established in CC Docket No. 96-45))

COMMENT IN SUPPORT BY THE NATIONAL ASSOCIATION
OF STATE TELECOMMUNICATIONS DIRECTORS

June 22, 1998

COMMENT IN SUPPORT BY THE NATIONAL ASSOCIATION
OF STATE TELECOMMUNICATIONS DIRECTORS

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JUN 22 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENT IN SUPPORT BY THE NATIONAL ASSOCIATION
OF STATE TELECOMMUNICATIONS DIRECTORS

NASTD has reviewed the Florida DMS motion and fully supports its request that renewal options which are part of competitively

1 On June 9, NASTD became aware of the notice for comments issued in this proceeding and immediately began notifying its governing body and preparing its comment. As an association representing many member states, NASTD follows a formal decision-making process in which approval of its governing body is required before such comments can be filed. Because of the required approval, NASTD was unable to file its comment before the June 11 initial comment deadline, but nevertheless requests that its comment be accepted, since no party would be prejudiced.

bid master contracts should not be included in the term "voluntary extensions", 47 C.F.R. § 54.511(d). This comment is being submitted electronically on diskette.

B. Many of NASTD's Member States Have Master Contract Programs Like Florida and They Have Similar Competitively Bid Renewal Options.

Many states represented by NASTD provide telecommunications services to schools and libraries through competitively bid master contracts, which they have used to gain the benefits of aggregation. By aggregating the demand for services by eligible entities throughout the state, STNs can obtain significant volume discounts from the carriers and other vendors with which they contract. Thus, the volume purchasing power of aggregated government needs lowers the cost per unit of service for all government entities on the STN, including schools and libraries of such small size and limited resources that this is the only practical means for them to obtain telecommunications services at such rates.

In addition, states typically operate their master telecommunications programs similar to that of Florida, using contracts which are competitively bid in accordance with standards designed to promote competition. States have recognized the benefits of competitive bid procedures in obtaining the most economic contracts for their citizens.

While the contracts between suppliers and STNs typically are multi-year in duration, they often are subject to renewal by the states on a yearly basis in accordance with statutory procurement

requirements. Many states enter into contracts with a one-year term and multiple one-year extensions. This is required due to state limitations on committing current funds to future years' operating expenses. We request that such arrangements not be treated as "voluntary extensions of contracts". (Note that paragraph 482 of the Fourth Report and Order states: "Thus, although we do not impose bidding requirements, neither do we exempt eligible schools and libraries from compliance with any state or local procurement rules, such as competitive bidding specifications, with which they must otherwise comply." Order at 482.)

C. NASTD Believes State Renewal Options
Incorporated in Competitively Bid Master
Contracts Should Not be "Voluntary Extensions".

In general, FCC regulations applicable to Universal Service Funds require the competitive bidding of telecommunications service contracts in order for them to be eligible for Universal Service Fund assistance. 47 C.F.R. § 54.504(a). As to this, NASTD has no quarrel.

Under paragraph (c) of section 54.511, the FCC has provided a limited exemption from competitive bidding for "existing contracts", as therein defined. This regulation grandfathers current contracts. According to paragraph (d) of that section, however, "the exemption . . . shall not apply to voluntary extensions of existing contracts." Section 54.511(d) was adopted by the Commission in Order No. FCC 97-420, issued in CC Docket No. 96-45 on December 30, 1997. See also 63 Fed. Reg. 2094 (Jan.

13, 1998) (summary of the Fourth Order on Reconsideration and Report and Order, issued Dec. 30, 1997).

On February 24, 1998, the staff of the SLC issued a Fact Sheet on master contracts, which interpreted the term "voluntary extensions" as an amendment to a contract. Under its interpretation, an amendment would remove a contract from the "existing contracts" exemption and would require that the amended contract be competitively bid to be eligible for the Universal Service funds.

In informal discussions with the SLC staff, however, the Florida DMS learned that the staff interpreted renewal options in master contracts to fall into the category of "voluntary extensions". In its motion, the Florida DMS explores both case law precedent and various Federal and state statutory codes to demonstrate why this is an incorrect interpretation. The thrust of the argument is that renewal options incorporated in master contracts on inception through competitive bid procedures should not constitute "voluntary extensions".

NASTD does not here repeat the legal arguments and conclusions which Florida presented in its motion, but it is in full agreement with them. NASTD has noted previously (see footnote 3 of its Sept. 26, 1997, ex parte comments in CC Docket No. 96-45) that state contracts often must be established in a format that is annually renewable -- rather than in a single multi-year format -- to meet statutory requirements. We believe that contracts renewed in accordance with renewal provisions

which are included as a provision in the contract, under circumstances which meet state procurement rules, should not be considered "voluntary extensions".

As a policy matter, NASTD believes the exercise of a pre-existing contract renewal options fully disclosed upon initial competitive solicitation is the prerogative of a state as the judge of what is beneficial to its citizens. The SLC will profoundly derogate from this sound proposition by insisting that states rebid contracts having such renewal options as a condition to Universal Service Fund assistance.

Like the Florida DMS, NASTD is unaware of any prior notice and comment procedures or contemporaneous explanation of the regulation at section 511(d) as of the time of its adoption. NASTD understands that paragraph (d) is intended, and rightly so, to thwart attempts by state agencies to avoid competitive bidding by subsequent amendment of existing contracts to extend their otherwise expiring terms, but believes that renewal options, as described herein, do not blunt competition.

Given the SLC's informal view, Florida has taken the precaution of rebidding some of its renewal contracts, as described in its motion, adding needlessly to its procurement costs. Many other states have telecommunication contracts which have been competitively bid under state standards but which will not be grandfathered if their renewal options are executed. NASTD hopes these other similarly situated states will avoid this costly rebidding exercise.

Without an explicit ruling from the FCC to correct the SLC's informal interpretation, NASTD believes that many states will be faced with Florida's dilemma: to require that small schools and libraries undertake multiple, costly, and probably uneconomical telecommunications procurements, or forgo substantial amounts of much needed financial assistance that national policy has provided.

D. Relief Requested.

Based on the foregoing, NASTD respectfully requests that the FCC grant the Florida DMS's motion for a declaratory ruling that exercise of renewal provisions which are part of the original master contracts will not disqualify master contracts as "existing contracts". Such a ruling would make master contracts exempt from competitive bidding until the expiration of their renewal terms.

Respectfully submitted,

National Association of State
Telecommunications Directors

By: 
Jody McCann
President

Council of State Governments
P.O. Box 11910
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Tel: (606) 244-8186

Dated: June 22, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of June, 1998, caused a copy of the foregoing COMMENT IN SUPPORT BY THE NATIONAL ASSOCIATION OF STATE TELECOMMUNICATIONS DIRECTORS filed in CC Docket No. 96-45, DA98-977 with the Federal Communications Commission to be served via U.S. mail, postage prepaid, or by hand delivery, as indicated, upon each person listed on the attached service list.

A handwritten signature in dark ink, appearing to read "Jody McCann", is written over a horizontal line.

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